

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 5/5/2015	(3) CONTACT/PHONE Cody Scheel, Project Manager / (805) 781-5157	
(4) SUBJECT Hearing to consider an appeal by Mildred Miyazaki and Terri Perevoski of the Planning Department Hearing Officer's decision to approve a Minor Use Permit / Coastal Development Permit (DRC2014-00030) to establish a residential vacation rental at 656 Santa Lucia Avenue, in the community of Los Osos. District 2.			
(5) RECOMMENDED ACTION It is recommended that the Board adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Department Hearing Officer and approving the Pamela Rutledge & Morro Bay Legacy LLC Minor Use Permit / Coastal Development Permit (DRC2014-00030) to establish a residential vacation rental at 656 Santa Lucia Avenue, in the community of Los Osos, based on the findings listed in Exhibit "A" of attachment 1, and the revised conditions listed in Exhibit "B" of attachment 1 (Board of Supervisors Resolution with Findings and Conditions).			
(6) FUNDING SOURCE(S) Current Budget	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>60 min.</u>) <input type="checkbox"/> Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: <u> </u>	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa Howe			
(18) SUPERVISOR DISTRICT(S) District 2			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Cody Scheel, Project Manager

VIA: Ellen Carroll, Planning Manager / Environmental Coordinator

DATE: 5/5/2015

SUBJECT: Hearing to consider an appeal by Mildred Miyazaki and Terri Perevoski of the Planning Department Hearing Officer's decision to approve a Minor Use Permit / Coastal Development Permit (DRC2014-00030) to establish a residential vacation rental at 656 Santa Lucia Avenue, in the community of Los Osos. District 2.

RECOMMENDATION

It is recommended that the Board adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Department Hearing Officer and approving the Pamela Rutledge & Morro Bay Legacy LLC Minor Use Permit / Coastal Development Permit (DRC2014-00030) to establish a residential vacation rental at 656 Santa Lucia Avenue, in the community of Los Osos, based on the findings listed in Exhibit "A" of attachment 1, and the revised conditions listed in Exhibit "B" of attachment 1 (Board of Supervisors Resolution with Findings and Conditions).

DISCUSSION

At the Planning Department Hearing on December 19, 2014, the Hearing Officer approved a proposal by Pamela Rutledge & Morro Bay Legacy LLC to allow an existing residence to be used as a residential vacation rental. The existing residence is located at 656 Santa Lucia Avenue, in the community of Los Osos. The Planning Department Hearing Officer considered the staff recommendation and the comments and correspondence received and adopted findings and conditions of approval for the project. These findings and conditions are set forth in Exhibits "A" and "B" of attachment 4 (Planning Department Hearing Staff Report; December 19, 2014). Based upon this decision, the Planning Department received two separate appeals of the Planning Department Hearing Officer's decision.

The two appeals were submitted by Mildred Miyazaki and Terri Perevoski. At the Planning Department Hearing (PDH) one of the appellants, Mildred Miyazaki, who is also the applicant's adjacent neighbor, spoke against the project. Several petitions, letters and comments were also presented to the Hearing Officer as part of the staff report prior to the Hearing. Some of the comments received concentrated on safety, noise, smoke/odor, parking, traffic, number of tenants and tenancies, sewer/water use, unpermitted bedroom and bathrooms, advertisement, payment of transient occupancy tax, environmental impacts to the Morro Bay estuary, density/proximity of vacation rentals, the potential for overcrowding and the feeling that the use was generally inappropriate for the physical location and the neighborhood. There are also comments of concern that the County's ability to conduct enforcement of existing vacation rental standards will not be successful. There are currently at least 16 other licensed vacation rentals in the community of Los Osos. To date there have been no complaints with the existing vacation rentals in Los Osos received.

Appeal Issues

The following outlines the issues raised by the appellant, Mildred Miyazaki:

Issue 1: The appellant stated that the decision was based on the wrong set of facts. The appellant explains that the existing residence was completed in 1978 and was originally permitted as a two bedroom/one bath residence, and then in 1991 obtained a permit for an addition to be used as an artist studio. At some time after 1992, when the addition permit

was inspected and finalized, two additional unpermitted bathrooms were added, one in the artist studio addition, and one in the master bedroom. The appellant mentions that the additional bathrooms are in violation with the Los Osos Building Moratorium imposed by the Regional Water Quality Control Board (RWQCB) in January 1998.

The appellant stated that in May 2013 there was an ownership change and the house was then listed on a vacation rental website as a three bedroom, three bath vacation rental, and then in August 2014 it was discovered that the rental was operating without a permit. The appellant stated that the unpermitted construction should be removed and the area returned to the permitted condition regardless of any approval of a vacation rental.

Staff Response: Through the planning application review process and prior to the Planning Department Hearing, it was discovered that the artist studio was/has been used as a third bedroom and two of the existing bathrooms were constructed without building permits. The residence was only permitted to have two bedrooms and one bathroom. Therefore, a condition has been included that limits the vacation rental to the two permitted bedrooms and requires that the applicant either remove the two bathrooms that were constructed without permits or receive a waiver from the Regional Water Quality Control Board for the additional bathrooms.

The additional unpermitted bathrooms are in violation of the Los Osos Building Moratorium, and the property owner is required to and has agreed to cease use of the artist studio as a third bedroom, and is working with Planning and Building Department staff to address the two unpermitted bathrooms.

Issue 2: The appellant stated that the hearing officer granted the use permit in spite of evidence of a possible intent to defraud. The appellant mentions that the detail of the 1991 addition permit includes work on "rough plumbing". This suggests an intent to build bathrooms at some future time, supposedly when the moratorium is lifted, but was done during the moratorium without permits regardless.

Staff Response: The addition was permitted under Minor Use Permit (MUP) D910045P, and during the application review process, the applicant was instructed to remove any plumbing fixtures from the plans, and the use permit was approved with no plumbing fixtures (see attachment 3, pages 1-6). The addition was constructed and finalized under building permit number 87261, plumbing fixtures were not included as part of the project and not approved as part of the permit (see attachment 3, pages 7-11). Staff is aware that the additional unpermitted bathrooms are in violation of the Los Osos Building Moratorium, and the property owner is working with Planning and Building Department staff to address the two unpermitted bathrooms (also addressed in condition of approval number 1.b).

Issue 3: The appellant stated that the MUP was granted in advance of remedial action being taken with no time limit and no consequences. The appellant mentions that the way the decision was written; the owner can do nothing to remove the bathrooms and still rent the house out on a 30-day rental and simply wait for the moratorium to be lifted.

Staff Response: The property owner will be required to either remove the two bathrooms that were constructed without permits, or receive a waiver from the RWQCB which could allow for the issuance of as-built building permits for the two additional bathrooms.

Issue 4: The appellant stated that the responsibility for the final decision was abdicated and referred to another agency. The appellant mentions that the decision basically did not address their concerns by offering the waiver from the RWQCB, and although an appeal is available, the final decision and action should have been made to deny the MUP and demand the bathroom removal, notwithstanding any request for waiver to the RWQCB.

Staff Response: The responsibility for the approval of the MUP decision rests with the Planning Department Hearing Officer, and was not abdicated or referred to another agency. However, as part of a condition to the MUP, if the applicant is able to secure a waiver from the RWQCB which would allow for the issuance of as-built building permits for the two additional bathrooms, the bathrooms could be permitted and not removed. Since the moratorium was imposed by the RWQCB, it is the Planning and Building Department's policy to offer applicants the option to request a waiver from the RWQCB. Now that the MUP has been appealed to the Board of Supervisors (BOS), the BOS will make the final decision on the project, unless the BOS's decision is appealed to the California Coastal commission, in which case the Coastal Commission would make the final decision on the project.

Issue 5: The appellant stated that no consideration was given nor action taken regarding any unpaid taxes or fees due. The appellant mentions that the subject property operated as a vacation rental for \$275 a night, but as of September 25, 2014, by the owner's admission, no taxes or applicable fines or fees had been paid to the County.

Staff Response: The residential vacation rental is conditioned to meet the regulations and standards set forth in Chapter

3.08 of the County Code, including any required payment of transient occupancy tax for the residential vacation rental, and that the Transient Occupancy Tax (TOT) Certificate number shall be included in all advertising for the residential vacation rental. The requirement for payment of TOT is not retroactive and would apply from the issuance date of a business license for the residential vacation rental. Other than resolution of the illegal construction through the permit process, no additional fines have been levied for the property owner.

The following outlines the issues raised by the appellant, Terri Perevoski:

Issue 1: The appellant expressed concern about the proximity of the proposed vacation rental in relation to the existing approved vacation rental located at 672 Santa Lucia Avenue (approximately 50 feet away), and the existing approved vacation rental located at 1161 Pasadena Avenue (approximately 875 feet away). The concern is about the effect of the rentals on the neighborhood due to the fact that they are close together. The appellant mentions that if the proposed vacation rental is approved, the other appellant's (Mildred Miyazaki) residence would be located between and adjacent to the proposed vacation rental located at 656 Santa Lucia Avenue, and the existing vacation rental located at 672 Santa Lucia Avenue. The appellant requests that the Board limit the number of monthly rentals in order to decrease the burden the immediate neighborhood will be carrying and lessen the impact of the concentration of these vacation rentals.

Staff Response: The Coastal Zone Land Use Ordinance section 23.08.165 governs the establishment of residential vacation rentals in the coastal zone. However, the standards set forth in this section only apply to the urban areas of Cambria, Cayucos and Avila Beach. The proposed project is located in the Community of Los Osos, therefore, the Residential Vacation Rental Ordinance distance limitation standards and operational standards do not apply. While those standards only apply to Zoning Clearances issued in Cambria, Cayucos and Avila Beach, the operational standards can be added to a discretionary permit if appropriate, which is the case with this particular permit application. Because these standards limit the number of occupants, set parking requirements, limit the number of vehicle trips, set noise and advertising standards, and designate a 24-hour property manager contact, potential impacts to surrounding property owners can be avoided. The proposed vacation rental also has a condition that limits the number of individual tenancies to four tenancies per calendar month. The first day of each tenancy determines the month assigned to that tenancy. No additional occupancy of the residence (with the exception of the property owner and private non-paying guests) shall occur. A residential vacation rental shall only be used for the purposes of occupancy as a vacation rental or as a full time occupied residence. No other use (i.e.: home occupation, temporary event, homestay) shall be allowed on the site. The proposed conditions of approval have routinely been added to other Minor Use Permits for establishment of residential vacation rentals.

OTHER AGENCY INVOLVEMENT/IMPACT

The project was referred to: Public Works, California Coastal Commission and the Los Osos Community Advisory Council.

FINANCIAL CONSIDERATIONS

The appellants were not charged for the appeal because it involves a Coastal Development Permit. Funding to process this appeal is covered within the Planning Department budget.

RESULTS

Denying the appeal and upholding the Planning Department Hearing Officer's decision will result in the establishment of a residential vacation rental at 656 Santa Lucia Avenue, in the community of Los Osos. Upholding the appeal would mean the Planning Department Hearing Officer's decision to approve Minor Use Permit / Coastal Development Permit (DRC2014-00030) is denied. This action is consistent with the countywide goal of promoting well governed communities.

ATTACHMENTS

1. Attachment 1 - Board of Supervisors Resolution with Findings and Conditions
2. Attachment 2 - Coastal Appeal Forms and Attachments
3. Attachment 3 - Permit Exhibits
4. Attachment 4 - Planning Department Hearing Staff Report; December 19, 2014
5. Attachment 5 - Correspondence submitted at the Planning Department Hearing on December 19, 2014
6. Attachment 6 - Petitions, letters and comments from interested parties
7. Attachment 7 - Planning Department Hearing Minutes from December 19, 2014